IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/02/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.No.37164 of 2002 and W.P.No.39346 of 2002 and W.P.No.46074 OF 2002
AND
WPMP.NOs.55873,58666,58667 & 67122 OF 2002

T. Chandran,
S/o. Thangavel Chettiar, .. Petitioner in all WPs

-Vs-

1. The District Collector,
Cuddalore District,
Cuddalore.

2. The Assistant Commissioner
(Excise), Cuddalore,
Cuddalore District. .. Respondents in WP.36714/02

3. The Commissioner,
Prohibition and Excise,
Ezhilagam, Chennai 5. .. Respondent No.2 in W.P.No.
39346 & 46074 of 2002

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Mandamus as stated therein.

For Petitioner : Mrs. Nalini Chidambaram
Senior Counsel for
Mr.S. Silambanan

For Respondents : Mr. K. Mahendran
Special Govt. Pleader

:J U D G M E N T

The same petitioner has filed three writ petitions. The basic facts in the three writ petitions are same. Pursuant to the notification for grant of retail vending of IMFL shop, wherein the petitioner filed an application for allotment of shop in Perumathur Village Panchayat. By order dated 2.9.2002, the petitioner was informed that he had been selected for the grant of licence of one IMFL shop for the Perumathur Village Panchayat area. On the basis of such intimation, the petitioner made further deposit including the

balance privilege amount. Thereafter the petitioner selected a shop as per Rule 13(7) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989 (hereinafter referred to as the Rules) and entered into a lease agreement and filed necessary application for the grant of licence in Form VII under Rule 13 (8). In normal course, the licence should have been granted in three days, but there was undue delay. Thereafter the petitioner filed W.P.No.37164 of 2002 on 25.9.2002 for giving a direction to the Assistant Commissioner (Excise), Cuddalore District to grant licence for retail vending of Indian Made Foreign Liquor shop in Perumathur Village Panchayat area.
Subsequently, the District Collector, Cuddalore passed an order dated 7.10.2002 cancelling the order dated 2.9.2002, whereunder IMFL shop had been allotted to the petitioner. Aggrieved by the said order, the petitioner has filed W.P.No.39346 of 2002 for quashing the order dated 7.10.2002 having reference NK.R.54974/02.
In the meantime on 18.12.2002 the first respondent issued a Revised Notification calling for applications for grant of privilege of retail vending IMFL shop including Perumathur village and date of auction was to take place on 23.12.2002. Aggrieved by the renotification, the petitioner has filed W.P.No.46074 forbearing the respondents from auctioning the shop in Peramathur Village Panchayat.

2. The main contention of the petitioner is to the effect that since the area in question had already been notified to be coming within Peramathur Village Panchayat and notification for locating liquor shop has been issued pursuant to which the petitioner had made all arrangements, there is no justification on the part of the respondents not to grant licence and the subsequent order passed by the Collector is without jurisdiction.

3. A counter affidavit has been filed in W.P.No.37164 of 2002, wherein it is indicated that initially there was delay in grant of licence as a representation had been filed by one P. Durairaj, who was a licencee of Vadakkuthu IMFL shop and in W.P.No.35384 of 2002, a direction had been issued to consider the said representation and therefore, the licence had not been issued to the petitioner at that stage. It is further stated that :
 . . . a detailed enquiry was conducted and it was found that though the notification forming the Perumathur Panchayat was published in District Gazette on 22.1.99 the order of the Government approving the formation is still awaited. Hence there is no Perumathur Panchayat in existence as on date. . .
It has been further stated that considering the point that there was no Perumathur Panchayat in existence in Government records and there would be loss of revenue as Indira Nagar lies within Neyveli Lignite Corporation and privilege amount should have be en fixed at Rs.16.10 lakhs and subsequently there would be loss of revenue, the order dated 7.10.2002 has been passed cancelling the privilege of IMFL retail vending shop allotted in favour of the petitioner.

4. A reply affidavit has been filed stating that Indira Nagar area does not fall within Neyveli Lignite Corporation Township as apparent from the Certificate dated 17.10.2002 issued by the Assistant Township

Administrator. It has been further indicated that the Collector is the authorised officer to notify any area as village panchayat as per Section 4(1) of the Tamil Nadu Panchayats Act, 1994. Since the Collector has already issued a notification in the District Gazette dated 22.1.1999, the contention of the respondents is not justified. It has been further indicated that there is no requirement of any Government approval.

5. On perusal of the provisions contained in the Tamil Nadu Panchayats Act, 1994 it appears that the Collector is the authorised officer to notify any area as village panchayat under Section 4(1) of the said Act. The relevant provisions contained in Section 4(1) of the Act is extracted hereunder :

4. Formation of panchayat villages.- (1) The Inspector, -

(a) shall, by notification, classify and declare every local area comprising a revenue village or villages or any portion of a revenue village or contiguous portions of two or more revenue villages with a population estimated at not less than five hundred as a panchayat village for the purposes of this Act; and

(b) shall, by notification, specify the name of such panchayat village.

. . .

6. No provision has been brought to my notice indicating that approval of the Government is required. The respondents themselves had issued notification inviting applications under the provisions of the Tamil Nadu Prohibition Act and on the basis of notification, as the petitioner had already made arrangements, the respondents were estopped from taking a contrary stand. Moreover, before issuing the subsequent order dated 7.10.2002

cancelling the earlier order, the petitioner had not been given any opportunity of hearing to the petitioner who had already made all the arrangements for opening the shop.

7. For the aforesaid reasons, I am inclined to quash the order dated 7.10.2002 passed by the first respondent and give a direction to the respondents to issue necessary licence under Rule 13(8) of the Tamil Nadu Liquor (Retail Vending) Rules. In view of the aforesaid conclusion, the subsequent action of the respondents seeking to reauction the shop also is to be quashed. Accordingly, all the writ petitions are allowed. Consequently, connected Miscellaneous Petitions are closed. No costs. Necessary licence shall be issued within a period of seven days from the date of receipt of this order.

Index : Yeso
Internet : Yes
dpk

To

1. The District Collector,
Cuddalore District,
Cuddalore.

2. The Assistant Commissioner
(Excise), Cuddalore,
Cuddalore District.

3. The Commissioner,
Prohibition and Excise,
Ezhilagam, Chennai 5.